

Appendix A.

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

Suffolk, ss.

Land Court

Case No. 17653 T.L.

CITY OF CHELSEA

vs

RICHARD T. GREEN COMPANY *et alii*

DECISION

This is a petition filed in the Land Court on April 29, 1940 to foreclose all rights of redemption under fourteen tax titles acquired by the petitioner on October 1, 1934 for the non-payment of taxes, which were assessed for the year 1932 on the parcels of land described in the petition which are situated in the City of Chelsea, G.L. (Ter. Ed.) c. 60, s. 65; St. 1933, c. 325, s. 12; St. 1938, c. 305.

The respondent, Richard T. Green Company, filed an answer and amendments thereto as provided in G.L. (Ter. Ed.) c. 60, s. 68 as amended by St. 1935, c. 224, s. 3; c. 354, s. 1; and c. 414, s. 3, in which it contends that the petitioner's tax title is invalid and sets forth as required by G.L. (Ter. Ed.) c. 60, s. 70, specifications on which it relies to defeat the tax title. It also seeks to redeem all the land described in the petition.

It was agreed at the trial that the sole question raised as to the validity of the tax title depended upon whether the cradle or its motivating machinery or both, located on what was called at the trial, and is hereinafter called parcel 18, but which is in fact parcel 4 as described in the

petition (Exhibit 1-K) and Lot 18 on Shearer's Plan of Winnisimmet dated 1832 and recorded with the Suffolk County Registry of Deeds at the end of Book 616, and assessed as real estate, were real estate or personal property during the years in question, and the case was tried on the above points and the amount that the taxpayer will be required to pay upon redemption of parcel 18 depending upon the determination of the foregoing question.

It was also agreed that the details of the assessments for the years 1932 to 1938, both inclusive, on parcel 18 were as follows:

Year	Bldg. Description	Bldg. Value	Area	Land Value	Total
1932	Marine Docks	\$30,000.	40,711 sq. ft.	\$12,000.	\$42,000.
1933	Marine Docks	30,000.	40,711 sq. ft.	12,000.	42,000.
1934	Marine Docks	30,000.	40,711 sq. ft.	12,000.	42,000.
1935	Marine Docks	30,000.	40,711 sq. ft.	12,000.	42,000.
1936	Marine Docks	30,000.	40,711 sq. ft.	12,000.	42,000.
1937	Marine Docks	25,000.	40,711 sq. ft.	12,000.	37,000.
1938	Marine Docks	25,000.	40,711 sq. ft.	12,000.	37,000.

Thereafter, only the land was assessed because the so-called "Marine Docks" had been removed from the property.

It was also agreed that the words "Marine Docks" in the assessments above described meant the marine railway hereinafter described together with all its component parts, including the foundation, the tract structure, the cradle and the hoisting machinery hereinafter described, and that the taxes assessed on parcel 18 in the years 1932 through 1938 both inclusive, were assessed upon the land constituting said parcel together with said "Marine Docks", and that the whole was assessed as a single parcel of real estate.

It was further agreed that the marine railway consisted of a foundation, a track structure, a cradle, and hoisting machinery. The foundation upon which the track rests is constructed of wood and rests on piling which was driven and cut for the required slope. The cradle itself is two hundred thirty feet long and, including the stone ballast, weighs approximately 530 tons. It could safely carry 2,000 tons. The hoisting machinery, contained in a building, and consisting of a winch and steam engine, is set on bolts and secured by nuts. The bolts range in length from 5 to 6 feet and are fastened to a wood foundation. The marine railway contains all the essentials of a drydock. The cradle travels up and down the inclined railway. The upper end of the track is above water, and the lower end is in considerable depth of water, so that when the cradle is all the way down, a ship can be floated onto it, and then the cradle can be pulled up the incline, bringing the ship with it. The incline of the marine railway is at a grade of one to twelve, this incline having been found adaptable for the particular location. The cradle is not attached to the understructure in any way, but just rests on it. The cradle operates on a series of free rollers on flat metal rails, and the power for pulling it is a system of four endless chains attached to the cradle and passing over sprockets on a big geared winch and around sheaves. The weight of the foundation and the hoisting machinery is approximately 40 to 50 tons. The machinery, consisting of a winch and the steam engine which operates it, is set on long bolts imbedded in a heavy wood timber foundation inside the boiler house located on high land on the upper end of the marine railway, and said machinery is kept in place by large nuts screwed onto these bolts. The machinery could be removed by unfastening the nuts and lifting the machinery off the foundation. The cradle could be removed from the particular location to another location either by

removing its ballast or by the use of lighters to make it float. However, if it were removed to a new location, a new track and foundation would have to be built in order to accommodate this particular cradle. The cradle was constructed on the premises. The marine railway could not function without the cradle or without the tracks or without the chains and rollers or without the machinery. It requires the unity of the entire structure and all its component parts for operation as a marine railway.

It is said in *Hamilton Manufacturing Company vs. Lowell*, 185 Mass. 114 at 117, "Under our statutes and decisions, real estate and personal estate are two distinct classes of property for the purpose of taxation. *Preston v. Boston*, 12 Pick. 7. *Howe v. Boston*, 7 Cush. 273. *Lowell v. County Commissioners*, 3 Allen, 546. Taxes upon real estate are a lien upon the property, and may be collected by a sale of it, while taxes upon personal property cannot be collected in this way." See also *Dunham vs. Lowell*, 200 Mass. 468.

G.L. (Ter. Ed.) c. 59, s. 3 provides "real estate for the purpose of taxation shall include all land within the commonwealth with all buildings and other things erected thereon or affixed thereto". Thus land and buildings and other things "erected thereon and affixed thereto" are properly taxed as a unit and this rule is not affected by the degree of physical attachment to the land. *Milligan v. Drury*, 130 Mass. 428, 430. *McGee v. Salem*, 149 Mass. 238, 240. *Paine v. Assessors of Weston*, 297 Mass. 173, 175. *Franklin v. Metcalfe*, 307 Mass. 386, 389. *Cook vs. Assessors of Wellfleet*, 1 Mass. Board of Tax Appeals Reports 128. See also *Callahan v. Broadway National Bank of Chelsea*, 286 Mass. 473. *Crocker-McElwain Co. v. Assessors of Holyoke*, 296 Mass. 338, 345. When the last mentioned case was before the Board of Tax Appeals it was held that "Boilers, railroad sidings, underground pip-

ing, yard equipment and hydraulic structures, whether they are to be classed with the land or the buildings where they are located, are properly included as part of the real estate". *Crocker-McElwain Company v. Board of Assessors of Holyoke*, 2 Mass. Board of Tax Appeals and Appellate Tax Board Reports, 159.

It is pertinent to say that the question of whether a cradle and its motivating machinery or both are real or personal property was tried in the United States District Court and is reported in 56 Federal Supplement 628. This case was appealed to the United States Circuit Court of Appeals for the First Circuit, which handed down an opinion on June 1, 1945 affirming the decision of the United States District Court which held that the cradle and hoisting machinery in the case were properly assessed as real estate. The cradle and motivating machinery discussed in this case are not the same as the cradle and motivating machinery discussed in the case before the Federal Courts. Thus while the decision of the Federal Courts is not binding on the Land Court in the instant case, nevertheless I am constrained to agree with both the reasoning and the conclusion reached by said courts.

The respondent does not claim that the foundation and the track structure are not properly assessed as a part of the real estate. As to a cradle and machinery, the United States District Court said: "The cradle and machinery were constructed, erected and installed on the land for the purpose of operating as a marine railway, together with other integral parts which are unquestionably real estate. . . . All of the component parts of the marine railway operate as a unit. If the cradle were moved, a new foundation and track would have to be built to conform with the dimensions of the cradle. If the machinery were moved, it could be used again only in connection with a marine railway. The cradle, the machinery, the foundation and

the track, being attached to each other (even the cradle is attached by means of the chains) and built to operate in conjunction with each other for a single purpose, should be considered as an entity. This is particularly true when considered with the degree of physical attachment and affixation and the weight of the cradle and machinery."

No useful purposes will be served by an extensive discussion of the evidence. It is sufficient to say that I have carefully examined and considered the stenographic record of the case, including the testimony of the expert for each party, the arguments and all the exhibits and as a result thereof and upon all the evidence I find that both the cradle and the hoisting machinery were integral parts of the marine railway which was composed of its aggregate parts attached to each other and built to operate in conjunction with each other as an entity, and I rule that the whole entity, including the cradle and hoisting machinery, was properly assessed as real estate within the provisions of G.L. (Ter. Ed.) c. 59, s. 3. *Franklin vs. Metcalfe*, 307 Mass. 386.

Hall vs. Carney, 140 Mass. 131; *Metropolitan Ice Company vs. Assessors of Cambridge*, 1939 Appellate Tax Board Advance Sheets 105; and *Hamilton Manufacturing Company vs. Lowell*, 185 Mass. 114, cited by the respondent are distinguishable.

I further rule as a result of what has been said and upon all the evidence that the tax titles are valid. The respondent asked to be permitted to redeem the real estate if the tax titles were determined to be valid and agreed with the petitioner as to amount necessary to redeem, if the cradle and hoisting machinery were determined to be real property. The respondent may, therefore, redeem upon the payment of the agreed sum of \$108,357.16, to which is to be added interest at the statutory rate from April 15, 1945 and Land Court costs of \$128.50.

The petitioner made fourteen requests for rulings which for the purpose of identification are marked "Exhibit A". These are treated as waived in view of the agreement in open court that they would be waived if the decision was in its favor.

The respondent made fourteen requests for rulings which for the purpose of identification are marked "Exhibit B". I give Nos. 1, 2, 3, 4, and 5. I refuse Nos. 6, 7, 8, 9, 10, 11, 12, 13, and 14 because either they are unnecessary, immaterial, contrary to the facts found by me or contrary to the law. All exhibits introduced in evidence at the trial are for the purpose of any appeal incorporated herein by reference.

So ordered.

JOHN E. FENTON

Judge

Dated: June 15, 1945